

WE WILL, upon request, bargain collectively with International Association of Bridge, Structural and Ornamental Iron Workers, AFL, Local 729, as the exclusive representative of all our employees in the appropriate unit described below with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such an understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees at our Greensboro plant, excluding office clerical employees, purchasing agent, salesman, foundry employees, guards, and all supervisors as defined in the Act

DEPENDABLE MACHINE CO., INC.,
Employer.

Dated By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

PAPE BROADCASTING COMPANY (RADIO STATION WALA)
and JOHN A. THOMPSON

LOCAL UNION NO. 1264, RADIO BROADCAST TECHNICIANS,
INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, AFL *and* JOHN A. THOMPSON. Cases Nos. 15-
CA-412 and 15-CB-84. April 13, 1953

DECISION AND ORDER

On September 22, 1952, Trial Examiner Sidney Lindner issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations with the following modifications.¹

The principal question of law in this case is whether the Respondent Local 1264 of the IBEW could lawfully require Thompson, an electrician, to surrender his membership card in Local 505 of the IBEW as a condition for satisfying the union-security clause in Local 1264's agreement with Pape Broadcasting Company, the employer Respondent. We agree with the Trial Examiner's conclusion that such a requirement exceeds the measure of union security permitted by the Act and is therefore unlawful.² The Trial Examiner also found, and we

¹ The parties' request for oral argument is hereby denied inasmuch as the record, including the exceptions and briefs, adequately presents the issues and the positions of the parties.

² Union Starch & Refining Co., 87 NLRB 779, enforced 186 F. 2d 1008 (C.A. 7).

agree, that Local 1264 would have refrained from causing Thompson's discharge under that contract only if he had surrendered his membership in Local 505 and regardless of the time of any other attempt by Thompson to acquire membership in Local 1264 in some other manner.³ We conclude, accordingly, that by causing Thompson's discharge from Station WALA the Respondent Union violated Section 8 (b) (2) and 8 (b) (1) (A) of the Act, and that by discharging Thompson at the Union's request, with knowledge of its unlawful motivation, Respondent Pape Broadcasting Company violated Section 8 (a) (3) and (1) of the Act.

The Trial Examiner rested his concluding finding on the further ground that Thompson made timely offer of proper dues, assessments, and initiation fees because Local 1264 had granted him an unconditional extension of time for satisfying the union-security provision of the contract. We find merit in the Union's exception that the extension granted was conditional upon Thompson's surrender of his Local 505 card, and not an unqualified extension. The record shows clearly that when 30 days had passed after the effective date of the union-security clause, Bailey, business manager of Local 1264, advised Thompson "to take steps to immediately become a member of Local Union 1264, IBEW, by depositing your IBEW card in this Local" [emphasis supplied]. However, a finding that Thompson did not make timely offer of dues and initiation fees does not affect our ultimate conclusion in the case, for the Union's fixed determination to accept nothing less than Thompson's traveling card made any other offer on his part, timely or late, futile. Rather, the qualifications imposed in Bailey's letter is further proof of the Union's unwavering insistence upon the unlawful requirement.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

1. Respondent Pape Broadcasting Company (Radio Station WALA) Mobile, Alabama, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Encouraging membership in Local Union No. 1264, Radio Broadcast Technicians, International Brotherhood of Electrical Workers, AFL, or in any other labor organization of its employees, by discriminating against its employees in regard to their hire or tenure of employment except to the extent permitted by Section 8 (a) (3) of the Act.

(b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

³ Cf. Westinghouse Electric Corporation, 96 NLRB 522.

(a) Offer to John A. Thompson immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges.

(b) Upon request make available to the Board or its agents, for examination or copying, all payroll records, social-security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due.

(c) Post at its offices and transmitter at Mobile, Alabama, copies of the notice attached to the Intermediate Report and marked "Appendix A."⁴ Copies of said notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being duly signed by Respondent Station WALA's authorized representative, be posted by said Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Station WALA to insure that said notices are not altered, defaced, or covered by any other material.

(d) Permit the posting on the employee bulletin boards of its offices and transmitter at Mobile, Alabama, of the notice required to be posted by the Union pursuant to section II, 2, (b) of this Order, and inform the Union of this permission.

II. Respondent Local Union No. 1264, Radio Broadcast Technicians, International Brotherhood of Electrical Workers, AFL, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Causing or attempting to cause Respondent Station WALA, its officers, agents, successors, and assigns, to discharge employees who have requested membership and tendered the initiation fees and periodic dues uniformly required as a condition of acquiring or retaining membership in Respondent Local Union No. 1264, or in any other manner causing or attempting to cause Respondent Station WALA to discriminate against its employees in violation of Section 8 (a) (3) of the Act.

(b) Restraining and coercing employees of Respondent Station WALA, its successors or assigns, in the exercise of the rights guaranteed by Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Notify Respondent Station WALA in writing that it withdraws all objections to the employment of John A. Thompson and that it requests said Respondent Station WALA to offer Thompson immediate and full reinstatement to his former or

⁴This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner" in the caption thereof the words "A Decision and Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

substantially equivalent position without prejudice to his seniority or other rights and privileges.

(b) Post at its business offices at Mobile, Alabama, copies of the notice attached to the Intermediate Report and marked "Appendix B."⁵ Copies of said notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being duly signed by official representatives of Respondent Local Union No. 1264, be posted by it immediately upon receipt thereof and maintained for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Local Union No. 1264 to insure that said notices are not altered, defaced, or covered by any other material.

(c) Mail to the Regional Director for the Fifteenth Region signed copies of said Appendix B for posting at Respondent Station WALA's offices and transmitter in Mobile, Alabama, in places where notices to employees are customarily posted.

III. Respondent Pape Broadcasting Company (Radio Station WALA) and Respondent Local Union No. 1264, Radio Broadcast Technicians, International Brotherhood of Electrical Workers, AFL, their officers, representatives, agents, successors, and assigns shall jointly and severally make whole John A. Thompson for any loss of pay he may have suffered by reason of the discrimination against him in the manner described in the section of the Intermediate Report entitled "The Remedy."

IV. Respondent Pape Broadcasting Company (Radio Station WALA) and Respondent Local Union No. 1264, Radio Broadcast Technicians, International Brotherhood of Electrical Workers, AFL, their officers, representatives, agents, successors, and assigns shall notify the Regional Director for the Fifteenth Region, in writing, within ten (10) days from the date of this Order, what steps they have taken to comply herewith.

Chairman Herzog and Member Styles took no part in the consideration of the above Decision and Order.

⁵ This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner" in the caption thereof the words "A Decision and Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon charges filed on October 3, 1951, by John A. Thompson, an individual herein called Thompson, the General Counsel of the National Labor Relations Board, herein called respectively the General Counsel and the Board, by the Regional Director for the Fifteenth Region (New Orleans, Louisiana), issued his complaint dated February 15, 1952, against Pape Broadcasting Company (Radio Station WALA) and against Local Union No. 1264, Radio Broadcast Technicians, International Brotherhood of Electrical Workers, AFL, Respondents, herein called respectively Station WALA and Local Union 1264, alleging that Respondent Station WALA had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, and that Respondent Local Union 1264

had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (b) (1) (A) and (2) and Section 2 (6) and (7) of the Act.

Copies of the complaint, charge, order consolidating cases, together with notice of hearing, were duly served upon Thompson and the Respondents.

With respect to the unfair labor practices, the complaint as amended at the hearing alleged in substance that: (a) Respondent Local Union 1264 on or about September 18, 1951, requested Respondent Station WALA to terminate the employment of Thompson and since the said date has persisted in its request that Thompson not be employed by Respondent Station WALA because he was not a member in good standing of Respondent Local Union 1264 even though membership in Respondent Local Union 1264 is not available to Thompson on the same terms and conditions generally applicable to other members, and further that Thompson was denied membership on some ground other than his failure to tender the periodic dues and initiation fees uniformly required by Respondent Local Union 1264 as a condition of acquiring or retaining membership; (b) Respondent Station WALA on or about September 22, 1951, discharged Thompson pursuant to Respondent Local Union 1264's request and thereafter failed and refused to reinstate him, although it had reasonable grounds for believing that membership in Respondent Local Union 1264 was not available to Thompson on the same terms and conditions generally applicable to other members and that membership of employee Thompson in Respondent Local Union 1264 was denied or terminated by Respondent Local Union 1264 for reasons other than the failure of Thompson to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership; and (c) by each of these acts Respondent Local Union 1264 violated Section 8 (b) (1) (A) and (2) and Respondent Station WALA violated Section 8 (a) (1) and (3) of the Act.

Respondent Local Union 1264's answer duly filed admitted that it had on or about September 18, 1951, requested Respondent Station WALA to terminate the employment of Thompson but denied that it committed any unfair labor practices.

The answer of Respondent Station WALA duly filed denied the commission of any unfair labor practices. It admitted the discharge of Thompson on or about September 22, 1951, pursuant to the request of Respondent Local Union 1264 and affirmatively alleged that at all pertinent times it was assured by Respondent Local Union 1264 that Thompson had failed to tender the periodic dues and initiation fees uniformly required by Respondent Local Union 1264 as a condition of acquiring or retaining membership therein and, in obedience to its contract with said Respondent Local Union 1264, refused to reinstate Thompson.

Pursuant to notice a hearing was held on May 12, 13, and 15, 1952, at Mobile, Alabama, before the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and the Respondents were represented by counsel and participated in the hearing. Full opportunity to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded all parties. At the close of the General Counsel's case, motions by each of the Respondents to dismiss the complaint against it, or portions thereof, upon the ground that the evidence adduced failed to substantiate the unfair labor practices alleged were denied. At the close of the entire case, the Respondents renewed their motions to dismiss for insufficiency of proof. Decision on these motions was reserved and they are now disposed of in the manner indicated in the findings of fact and conclusions of law below. At that time a motion by the General Counsel to conform the pleadings to the proof with regard to minor variances was granted. Opportunity to argue orally and to file briefs and proposed findings of fact and conclusions of law was extended to all parties. Counsel waived oral argument. Briefs have been received from all parties and have been duly considered.

Upon the entire record in the case and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Pape Broadcasting Company (Radio Station WALA) is an Alabama corporation with principal offices in the city of Mobile, Alabama, where it is engaged in the operation of Radio Station WALA. Under a license issued by the Federal Communications Commission, Radio Station WALA operates on 5,000 watts for unlimited hours day and night. Its general coverage is Mobile and Baldwin County. It is affiliated with the National Broadcasting Company chain and in excess of 50 percent of its broadcast time is spent broadcasting either commercial or sustaining programs of the National Broadcasting Company system. The parties do not dispute, and it is found, that Respondent Station WALA is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Local Union No 1264, Radio Broadcast Technicians, International Brotherhood of Electrical Workers, AFL, is a labor organization admitting to membership employees of the Respondent Company.

III. THE UNFAIR LABOR PRACTICES

The Facts¹

John A. Thompson, the charging party, was an employee of Respondent Station WALA as a radio engineer at its transmitter from January 1949 until his discharge on September 22, 1951.

At the time of the hearing herein Thompson had been a member of the International Brotherhood of Electrical Workers (herein called IBEW) for 12 years. He was originally admitted to membership in a local union in Montgomery, Alabama, to which local union he paid the required initiation fee. In 1940, he transferred his membership to Local Union 505 in Mobile, Alabama, where the initiation fee was \$102 and paid a difference of \$52.² From 1942 until sometime in 1948, he was employed as an international representative of the IBEW. Thereafter, he worked at a radio station in Montgomery, Alabama, where he was a member of Local Union 1299. Sometime in 1948 he took up membership in Respondent Local Union 1264, which has jurisdiction over radio technicians and servicemen in the four radio stations located in Mobile, Alabama. Since the initiation or admission fee of Respondent Local Union 1264 is \$50, it was not necessary for Thompson to pay any additional or new initiation fee.³ Thompson served as the president or executive board member of Respondent Local Union 1264 during his tenure of membership.

Thompson testified that in April 1951, in an effort to secure employment to supplement the income from his regular job at Respondent Station WALA, he obtained a traveling card from Respondent Local Union 1264 and deposited the same with Local Union 505 which maintains jurisdiction over electrical construction and line work inside and outside of buildings. Thompson had previously talked with Business Manager Shannon of Local Union 505 who advised Thompson to place his traveling card in Local Union 505 if it was his intention to obtain employment in the electrical construction field.⁴

Thompson also discussed his need for additional employment with Howard K. Martin, general manager of Respondent Station WALA, who advised that he had no objection to Thompson's doing electrical work outside of his regular working hours at Station WALA so long as it did not conflict with his schedule. In fact, Thompson's regular schedule was rearranged when he obtained a day job with the Alabama Power Company and he was permitted by the chief engineer at the transmitter to report 15 minutes later in the afternoon to enable him to work in the electrical trade.⁵

Thompson admitted that when he transferred his traveling card from Respondent Local Union 1264 to Local Union 505, he became a member of the latter local union upon its acceptance of the traveling card.

On May 30, 1951, a union-shop election was held under Section 9 (e) of the Act, as a result of which the Board certified that a majority of the employees eligible to vote had voted to authorize Respondent Local Union 1264 to make a union-shop agreement in conformity with the provisions of Section 8 (a) (3) of the Act. By amendment there was added to the general

¹ The findings in this section are made upon evidence which for the most part is documentary or undisputed or is at variance only as to minor details and are made without explanation based upon the preponderance of the reliable, probative, and substantial evidence in the record considered as a whole.

² Article XXV, section 8, of the IBEW constitution provides "A member not having five years' continuous good standing in the I.B.E.W. shall pay any difference in admission or initiation fee to the L. U. to which he applies. . . ."

³ It should be noted that article XXV, section 9, of the IBEW constitution provides among other things "No member of the same branch of trade with five years or more continuous good standing shall be required to take any examination or pay any difference in admission fee, except when he changes his classification within the same branch, if the L. U. so decides. . . . No member with five years or more continuous good standing - transferring to a different branch of the trade - shall be required to pay any difference in admission fee. . . ."

⁴ Article XXV, section 6, of the IBEW constitution states that "No member shall work in the jurisdiction of another L. U. until his traveling card has been accepted, or he receives a working card, except by consent of the I. P. in special cases, and except in cases where L. U.'s allow their members to work, by agreement or understanding, in the jurisdiction of each other. . . ."

⁵ Thompson worked from 8 a.m. to 4 p.m. at the Alabama Power job and 4:30 p.m. to 12:30 a.m. at his regular job at Station WALA transmitter.

working agreement between Respondent Station WALA and Respondent Local Union 1264 the union-security clause set forth below, the effective date of which was to be May 31, 1951:

All present employees covered by this agreement and all persons covered by this agreement who are employed by the Employer after the effective date hereof shall within thirty (30) days following the effective date of this agreement or the beginning of such employment, whichever is the later, become members of the Union and, as a condition of employment, remain members of the Union during the term hereof.

The General Counsel conceded at the hearing that the clause was duly authorized and that it was a valid union-shop clause.

On June 4, 1951, Respondent Local Union 1264 by its then president, J. C. Burns, advised Thompson by registered letter of the results of the UA election and of the amendment of the general working agreement to include the union-shop clause. The clause was quoted verbatim in the letter. The letter closed with the statement that Respondent Local Union 1264 was officially notifying Thompson of the conditions now existing at Radio Station WALA and he was requested "to take such steps as [you deem] necessary and proper to comply with the terms of the agreement as now amended relative to membership in Local Union 1264, IBEW "

Thompson testified that in the latter part of June he talked with Roger Killough, financial secretary of Respondent Local Union 1264, at the transmitter of Radio Station WALA where they were both employed and offered to pay the June dues and assessments to Respondent Local Union 1264. Killough, according to Thompson, said he had not been authorized by Respondent Local Union 1264 to accept any dues and assessments from Thompson and under the circumstances could not accept \$10 in cash for the said payment, which Thompson offered Killough.

Killough, testifying regarding the said incident, admitted a conversation with Thompson on June 24. He stated that when Thompson inquired regarding the amount of dues and assessments, he was unable to tell him the exact amount because he did not have the books with him. He did mention, however, that the dues and assessments were approximately \$9.⁶ Killough denied that Thompson offered him a \$10 bill on the occasion for the said payment.⁷

Under date of June 28, 1951, Thompson in a letter to Burns acknowledged receipt of the latter's letter of June 4. Among other things the letter stated that Thompson had been a member in good standing in the IBEW for 12 years; that he was presently a member in good standing in Local Union 505 and had paid his dues and assessments through the month of June 1951; and that it was his intention to remain a member in good standing in the Union. Thompson claimed that prior to the UA election he had attempted on two occasions to pay working assessments, the same as paid by all other members of Respondent Local Union 1264 to its financial secretary, Roger Killough, but the latter refused to accept the assessments on the grounds that Respondent Local Union 1264 had not instructed him to accept the same from Thompson. The letter further related the fact that at a recent membership meeting of Respondent Local Union 1264 its business manager, Henry Bailey, told the meeting that he (Bailey) had been informed by IBEW International Vice-President G. X. Barker, that Thompson could be required to pay both dues and assessments to Respondent Local Union 1264. Thompson noted that he accepted Bailey's statement at face value and thereafter on June 24 made inquiry of Killough as to the amount of dues and assessments that other employees of Radio Station WALA were paying to the Union, since he had recently been informed that the dues and assessments had been reduced. Killough was unable to advise the correct amount but indicated he would contact Thompson later. In view of Killough's negligence in not submitting the requested information to him and unaware of the exact amount, Thompson enclosed a postal money order in the amount of \$9 to cover June 1951 dues and assessments of Respondent Local Union 1264 and requested that any amount in excess be applied to his July dues and assessments. A copy of this letter was sent to Martin, general manager of Respondent Station WALA.

⁶The complaint does not allege the exaction of assessments to be violative of the Act. In fact, the General Counsel conceded at the hearing that assessments were considered as part of the monthly dues uniformly applicable to all members and not excessive. The record reveals that Thompson paid dues and assessments to Respondent Local Union 1264 during 1951 as follows: January \$9.68; February \$9.68; March \$9.68; and April \$9.53. Thereafter upon depositing his traveling card with Local Union 505, he paid dues and assessments to the said local union. In June 1951, Respondent Local Union 1264 reduced its dues and assessments \$1.10 thus making the payment approximately \$8.43.

⁷I find it unnecessary to resolve this conflict in the evidence in view of the tender of initiation fee and dues thereafter made by Thompson.

On July 1, 1951, Bailey sent Thompson the following letter by registered mail:

Dear Bro. Thompson:

Bro. Burns, president of Local 1264 handed me your letter dated June 28, 1951, with instructions that I answer same.

We are returning the money order you enclosed inasmuch as the amount is not correct, and the other and surrounding circumstances in connection therewith will not permit legal acceptance thereof.

Your letter has been studied to some length, in order that we might understand your intention and after such study, and further expert advice, we have the following conclusions to offer:

1. The union shop provisions of the contract between Local Union 1264 of the IBEW and the Pape Broadcasting Co., Inc., went into full force and effect as of July 1, 1951.

2. As of June 6, 1951, we notified you of the existence of the conditions as they would prevail after July 1, 1951, and further requested that you make proper preparation to comply with the union shop conditions when they became effective.

3. Your letter of June 28, 1951, apparently implies that membership of yourself in Local 505 of the IBEW is sufficient to permit your working in the jurisdiction of Local Union 1264 under union shop conditions. Please allow us to point out that Local Union 505 is not a party to the working agreement at WALA, nor was Local Union 505 certified for the union shop provisions at WALA. In both cases, Local Union 1264 is exclusively designated as "the union." A further amplification of your present position as you seem to interpret it would make it legal and proper for any member of any IBEW local union to work at will within the jurisdiction of any other IBEW local, even under union shop conditions which might prevail. This could easily be applied under your interpretation to allow you to remain a member of Local Union 1264, and work within the jurisdiction of Local 505. I am sure Bro. Shannon would not concur at all in this interpretation. Further, if this were true, the formality and trouble of conducting union shop elections for individual locals of the IBEW by the NLRB would be a total waste of time and effort. I am sure you fully know that the position which you seem to assume in this matter is wholly and completely in error.

In view of the foregoing and further in view of the existence of the union shop conditions now prevailing at the Pape Broadcasting Co., Inc., under which Local Union 1264 of the I. B. of E. W. is exclusively designated as "The Union," we again wish to notify you to take steps to immediately become a member of Local Union 1264, IBEW, by depositing your IBEW card in this local, and making proper payment of dues as are legally payable to the financial secretary of Local Union 1264, Brother Roger Killough.

Although as stated previously the UA conditions now prevail at WALA, we are offering an extension of time in this matter in which time we trust you will take the action with reference to membership in Local 1264. This is for your convenience, and we trust you will proceed immediately in this matter.

Thompson replied to Bailey with another letter dated July 5, 1951: *

This will acknowledge receipt of your letter dated July 1, 1951, in which you state that the Union is refusing to accept my postal money order to the amount of \$9 to cover June 1951 dues and assessments. You also state that the amount of the money order is incorrect, but again refuse to inform me of the correct amount to be submitted to the financial secretary of the Union. Also you notify me to take immediate steps to become a member of Local Union No. 1264 and pay proper dues to financial secretary of Local Union 1264, Brother Roger Killough.

Frankly, I feel that I have tried to comply with the intent of your demands as outlined in your recent communication. On two occasions, although not legally required to do so, in the interest of trying to do my part to financially support the bargaining agency, I have offered the financial secretary of the local union assessments as paid by all other employees working under agreement between the Company and the International Brotherhood of Electrical Workers. Upon receipt of your letter advising me that the Union had won a union shop election at WALA, I offered the local union dues and assessments 1 month prior to the effective date of the union shop provisions of the agreement. The local union refused to accept these offered payments. It presents a problem to pay the local union dues and assessments when the local union refuses to tell me how much they are and when I

* A copy of this letter was sent to and admittedly received by Martin.

submit an amount in excess of what I consider more than adequate, the local union refuses to accept same with the statement that it is the incorrect amount

In compliance with your request that I immediately take steps to become a member of Local Union No. 1264, I enclose herewith an application for membership in Local Union No. 1264 and a postal money order to the amount of \$52 to cover my initiation fee in full. Also I am enclosing my postal money order to the amount of \$9 to cover the first month's dues and assessments after my application for membership has been accepted by the local union.

Hoping that my application for membership is acted upon favorably by the membership of Local Union No. 1264, I remain,

Thompson testified that soon after he sent the above letter to Bailey, he received a telephone call from IBEW International Vice-President G. X. Barker while working at the transmitter. Barker inquired why Thompson had taken a traveling card from Respondent Local Union 1264 and deposited the same with Local Union 505. Thompson explained that he had to have the extra work whereupon Barker stated he would make arrangements with Shannon for Thompson to work in the jurisdiction of Local Union 505 if he would remove his traveling card from Local Union 505 and redeposit the same with Respondent Local Union 1264. Thompson told Barker that he would prefer to remain a member of Local Union 505 in view of its extra benefits⁹ but if Barker issued instructions regarding the traveling card he would comply with the same.

Barker confirmed his conversation in a letter dated July 11 addressed to Thompson and also advised him to apply to Respondent Local Union 1264 for a refund of the \$52 previously submitted as an initiation fee with his application form

A few days after Thompson received Barker's July 11 letter, Shannon, business agent of Local Union 505, came out on the construction job where Thompson was working for the Alabama Power Company¹⁰ and told him that Barker instructed Local Union 505 to issue a traveling card to Thompson and the same was at the office.

During the first week of August 1951, Thompson picked up the traveling card at the union office and in a letter dated August 6, 1951, to Alvin Bell, the then president of Respondent Local Union 1264, enclosed the traveling card and requested the return of the money orders previously sent by him to cover the initiation fee as well as the dues and assessments

On or about August 27, Bell informed Thompson that Respondent Local Union 1264 agreed to accept Thompson's traveling card until it was discovered that it was invalid. (The expiration date on the traveling card submitted by Thompson was July 31, 1951, and it did not bear his signature which is a requirement for the acceptance of a traveling card.) Bell told Thompson to submit a valid traveling card which would be accepted. He also informed Thompson that the two money orders previously submitted to Respondent Local Union 1264 for initiation fee and dues would be returned to him as requested. Thompson expressed dissatisfaction that Respondent Local Union 1264 agreed to accept his traveling card and mentioned that it was his hope it would be refused so that he could continue his membership in Local Union 505. Thompson also admitted that he was aware that the traveling card submitted in his letter of August 6 to Respondent Local Union 1264 had expired.

At an executive board meeting of Respondent Local Union 1264 held on September 18, the Thompson case was reviewed and it was then decided that Respondent Local Union 1264 would cause the termination of Thompson's employment at Respondent Station WALA. Bell also testified that from the period August 27 to September 18, 1951, no steps were taken by Thompson to furnish Respondent Local Union 1264 with a valid traveling card.

On September 19, 1951, Bailey and Bell called on Martin and left with him a letter dated September 18, 1951, wherein the Union informed Martin that Thompson had not become a member of Respondent Local Union 1264 within 30 days after the effective date of the union-security provisions of the general working agreement, and accordingly it was requested that Thompson's services be terminated at the end of the present pay period (September 22).

Martin testified that he asked Bailey and Bell if there was anything against Thompson which would prevent him from being a member of the Union and they replied that if Thompson deposited a valid traveling card and paid his dues, neither of which acts he complied with, he could become a member of Respondent Local Union 1264.

⁹ Thompson explained that he had in mind particularly the death benefits which his widow and family would receive from Local Union 505. Furthermore, as a member of the said local, Thompson had certain seniority rights in the assignment to construction jobs, so that if he was not a member but was assigned to jobs on the basis of a temporary workcard he would not have received as much work.

¹⁰ From April 1951, when Thompson deposited his traveling card with Local Union 505, he held down two jobs, the construction job with the Alabama Power Company during the day and the radio technician's job at Station WALA from 4:30 p.m. to 12:30 a.m.

Martin called Thompson to his office on September 19 where they discussed the dismissal request. Thompson testified that he explained to Martin that he had made application for membership in Respondent Local Union 1264, had tendered dues and assessments, and thought he had complied with the requirements of the Act. Thompson requested Martin not to take action on the termination request and stated he would get in touch with IBEW International Vice-President Barker to straighten out the situation. Martin agreed.

That afternoon Thompson spoke with Barker who advised Thompson to obtain another traveling card from Local Union 505 and submit it to Respondent Local Union 1264. Thompson following Barker's advice secured the traveling card and paid 2 months dues in advance to Local Union 505. Under date of September 20, Thompson mailed the new traveling card to Respondent Local Union 1264 and sent copies of the letter to Barker and Martin. On September 20 Martin also spoke with Barker by telephone and asked the latter's advice regarding the Thompson situation. Barker told Martin that he had explained the proper procedure to Thompson with respect to resubmitting his traveling card and dues to Respondent Local Union 1264 and indicated to Martin that all he could do was to live up to the contract.

On September 22 Martin again met with Bailey and Bell, showed them his copy of Thompson's letter of September 20, and asked if the Union had received the valid traveling card. Martin also inquired if that would in any manner affect the request to terminate Thompson. Bell and Bailey told Martin that they had never seen the letter, had not received it, and that it would not affect the request to terminate Thompson previously made.

Martin in a meeting with Thompson about 12 noon on September 22, related his conversation with Bailey and Bell and handed him a dismissal letter which set forth among other things that in accordance with the present working agreement between Respondent Local Union 1264 and Respondent Station WALA, it was necessary to terminate Thompson's services on September 22, 1951.

The afternoon of September 22, Thompson spoke with Barker who suggested that Thompson contact IBEW International Representative Wes Holtz to assist him to get his position straightened out. Thompson testified he spoke with Holtz who said that in view of Respondent Local Union 1264's refusal to pick up the traveling card at its post office box,¹¹ he saw nothing else for Thompson to do but accept the termination.

The week following his discharge, Thompson attended an executive board meeting of Respondent Local Union 1264, offered an explanation regarding the traveling card and asked for reconsideration of its action in requesting his dismissal from Respondent Station WALA. Respondent Local Union 1264 refused to take any action in the matter. Thompson has not been reemployed by Respondent Station WALA.

Conclusions

The question for decision is whether Thompson made the proper tender of dues and initiation fee or traveling card in due time after the effective date of the valid union-security agreement between Respondent Local Union 1264 and Respondent Station WALA to bring himself within the protection from discharge contained in the provisos of Section 8 (a) (3) and in Section 8 (b) (2) of the Act.

It is the General Counsel's contention raised at the hearing and in his brief that since Thompson was a member in good standing of Local Union 505 and contemporaneously and automatically a member in good standing of the IBEW that the tender on June 28 of the postal money order for dues and assessments was "all that [he] had to do to become a member in good standing of Local 1264." In support of this contention the General Counsel relies on the fact that since Thompson previously paid initiation fees in excess of the amount prescribed by Respondent Local Union 1264 for new members and transferring old members, it therefore only remained for him to tender the periodic dues uniformly required as a condition of acquiring or retaining membership.

I cannot agree. Article IX, section 4, of the bylaws of Respondent Local Union 1264 dealing with admission of members states that "traveling cards shall be dealt with in accord with Article XXV of the I.B.E.W. Constitution." Section 2 of article XXV of the international constitution in substance provides that transfer of membership shall be accomplished by obtaining a valid traveling card from the local union where membership is held and depositing the same with the local union to which the member desires to transfer. While it is true, as the General Counsel contends, that Respondent Local Union 1264 could not exact a second initiation fee from Thompson,¹² it was nevertheless incumbent upon him since he was then a member of

¹¹ Thompson in all of his correspondence with Respondent Local Union 1264 sent both registered and regular mail to its post office box which appears on its stationery.

¹² See Article XXV, section 10 of the international constitution

Local Union 505 to deposit a valid traveling card with Respondent Local Union 1264 in addition to the tender of dues to attain membership in the said local union. Furthermore, the record does not reveal nor does the General Counsel contend that the requirement that Thompson deposit a valid traveling card with Respondent Local Union 1264 was not equally applicable to all union members seeking transfer of membership to said local union.

If we were concerned here solely with the action taken by Thompson during June 1951 to acquire membership in Respondent Local Union 1264, in my opinion there would not be a violation of the Act. However, the evidence reveals and I find that on July 1 Respondent Local Union 1264 gave Thompson an extension of time to "become a member" and thus bring himself into compliance with the union-security agreement.

Within a reasonable time and on July 5, although Thompson did not follow the specific directions of Respondent Local Union 1264 to acquire membership, namely "by depositing your IBEW card in this Local" he filed an application for new membership and tendered the dues and initiation fee. In accordance with the Board's decision in the Union Starch & Refining Company case, 87 NLRB 779, enforced 186 F. 2d 1008 (C. A. 7), I find that although Thompson may not be entitled to membership in Respondent Local Union 1264¹³ because of noncompliance with the condition imposed that he deposit a valid traveling card, he was nevertheless afforded job protection under proviso (B) of Section 8 (a) (3) of the Act.

The Respondents contend that the principle of law enunciated in the Union Starch case is not applicable to the situation herein for the reasons that Thompson's tender of the initiation fee and dues was not timely made and he was never given a waiver to make the payments belatedly. I do not agree. The language in the letter of July 1, set forth in detail hereinabove, is clear. It granted an extension of time to Thompson to acquire membership in Respondent Local Union 1264 and thus bring himself into compliance with the union-security clause of the contract. It cannot be interpreted otherwise. I further find that the Board's decisions in Chusholm-Ryder Co., Inc., 94 NLRB 508, and in Standard Brands, Inc., 97 NLRB 737, cited by Respondents in their briefs are inapposite. Indeed, it appears obvious from the conduct of Respondent Local Union 1264 in its overall handling of the Thompson matter, its refusal to act on his application for new membership and accept his tender of initiation fee and dues, its insistence upon his compliance with its specific directions for acquiring membership and its return of the initiation fee and dues, that Respondent Local Union 1264 would not have refrained from requesting Thompson's discharge even if he had timely requested membership anew in said local union and timely offered the dues and new initiation fee. In these circumstances, it was not incumbent upon Thompson to fulfill the obligation of "tender" in order to come within the protection of the Act for "a formal tender is . . . unnecessary in cases involving proviso (B) where the circumstances indicate that such a tender would have been a futile gesture." See Westinghouse Electric Corporation, 96 NLRB 522, where the Board stated also "the duty to tender is extinguished only where, as in the present case, the union demonstrates by affirmative conduct and statements that tender would not have stayed its request for discharge. Otherwise, of course, an employee has the normal duty to go forward with his tender during the grace period."

We come next to the question of the effect of Thompson's request for the return of the initiation fee and the return of the same to him by Respondent Local Union 1264. As found hereinabove, Thompson was acting upon the specific instructions of IBEW International Vice-President Barker who had been called upon by Respondent Local Union 1264 to help solve the Thompson problem. In view of this fact, Respondent Local Union 1264 cannot at this time rely on Thompson's action as an abnegation of his tender timely made.

Upon the foregoing and the record as a whole, even though Thompson admittedly wanted to retain his membership in Local Union 505 and only reluctantly requested membership in Respondent Local Union 1264, he nevertheless made timely tender of initiation fee and dues and subsequently attempted to comply with the specific instructions of Respondent Local Union 1264 to acquire membership. Accordingly, I am constrained to find that by causing the discharge of Thompson, Respondent Local Union 1264 has engaged in conduct violative of Section 8 (b) (2) and 8 (b) (1) (A) of the Act. See Union Starch & Refining Company, *supra*.

As hereinabove found, Respondent Station WALA was given every assurance by Respondent Local Union 1264 that its request for Thompson's discharge was strictly in accordance with law and with its union-security agreement. In addition it diligently investigated the request¹⁴

¹³ There is evidence in the record that membership in two local unions of the IBEW is forbidden. This matter could have been dealt with by either the International or either of the local unions in which Thompson held membership and attempted to acquire membership. It is an internal union problem with which we are here not concerned.

¹⁴ The Eclipse Lumber Company, 95 NLRB 464; The Baltimore Transfer Company, 94 NLRB 1680.

for discharge in its attempt to get to the bottom of the Thompson case. It is precisely these facts which impel a finding that Respondent Station WALA violated the Act. Martin admittedly was told in his conversation with Bailey and Bell on September 22 that Thompson could achieve membership in good standing in Respondent Local Union 1264 by depositing a valid traveling card, and it was because of his failure to meet this condition that his termination was being pressed by Respondent Local Union 1264. Martin also admitted that Thompson told him on September 19 that he had previously tendered initiation fees and dues to Respondent Local Union 1264. With full knowledge of these facts,¹⁵ Respondent Station WALA acceded to the request for Thompson's discharge. While it is true, as counsel for Respondent Station WALA points out in his brief, that under the circumstances in which it found itself, "the employer had to take hold of one horn of the dilemma" unfortunately in so doing it committed an unfair labor practice. Cf. Westinghouse Electric Corporation, *supra*.

Upon the whole record, I am constrained to find that Respondent Station WALA discharged Thompson on September 22, 1951, because he was not a member of Respondent Local Union 1264. As Respondent Station WALA knew that Thompson tendered the periodic dues and initiation fee uniformly required as a condition of membership without being accorded membership, I find that Respondent Station WALA discriminated in regard to hire or tenure of employment to encourage membership in Respondent Local Union 1264 in violation of Section 8 (a) (3) of the Act and thereby interfered with, restrained, or coerced employees in the exercise of the rights guaranteed in Section 7 in violation of Section 8 (a) (1).

Respondent Station WALA has submitted proposed findings of fact and conclusions of law which are omnibus in nature. In view of the method of submission, they cannot be specifically ruled on and where contrary to the findings and conclusions made in this report are rejected.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondents set forth in section III, above, occurring in connection with the activities of Respondent Station WALA, set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

It having been found that Respondents have engaged in and are engaging in certain unfair labor practices, it will be recommended that they cease and desist therefrom and that they take affirmative action designed to effectuate the policies of the Act.

Having found that Respondent Station WALA has discriminated with respect to the hire and tenure of John A. Thompson, it will be recommended that it offer him full and immediate reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges. See *The Chase National Bank of the City of New York, San Juan, Puerto Rico*, Branch, 65 NLRB 827. Having also found that Respondent Local Union 1264 in violation of Section 8 (b) (2) and 8 (b) (1) (A) of the Act caused Respondent Station WALA to discharge John A. Thompson, it will be recommended that the said Respondent notify Respondent Station WALA in writing that it has withdrawn its objections to the employment of Thompson and that it request Respondent Station WALA to offer Thompson full and immediate reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges.

Inasmuch as it has been found that both Respondents are responsible for the discrimination suffered by Thompson, it will be recommended that they jointly and severally make Thompson whole for any loss of pay he may have suffered by reason of the discrimination against him. *Squirt Distributing Company*, 92 NLRB 1667. The liability of Respondent Local Union 1264 for back pay shall terminate 5 days after it notifies Respondent Station WALA that it has withdrawn its objections to his employment. *Pinkerton's National Detective Agency, Inc.*, 90 NLRB 205. Said loss of pay shall be computed on the basis of each separate calendar quarter or portion thereof during the period from the date of the discriminatory action to the date of a proper offer of reinstatement or in the case of Respondent Local Union 1264, to a proper withdrawal of objections to employment. The quarterly periods herein called "quarters" shall begin with the first day of January, April, July, and October. Earnings in one particular quarter shall have no effect on the back-pay liability for any other quarter. It is also recommended that Respondent Station WALA be ordered to make available to the Board, upon request, payroll and other records to facilitate the checking of the amount of back pay due.

¹⁵Martin also received copies of practically all the correspondence between Respondent Local Union 1264 and Thompson.

F. W. Woolworth Co., 90 NLRB 289. Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Local Union No. 1264, Radio Broadcast Technicians, International Brotherhood of Electrical Workers, AFL, is a labor organization within the meaning of Section 2(5) of the Act.
2. By discriminating with respect to the hire and tenure of John A. Thompson, thereby encouraging membership in Respondent Local Union 1264, Respondent Station WALA has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.
3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, Respondent Station WALA has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
4. By attempting to cause and causing Respondent Station WALA to discriminate in violation of Section 8 (a) (3) of the Act against John A. Thompson, who was also denied membership in Respondent Local Union 1264 upon a ground other than his failure to request membership and tender the initiation fees and dues uniformly required as a condition of acquiring membership, Respondent Local Union 1264 has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.
5. By restraining and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, Respondent Local Union 1264 has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act.
6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT encourage membership in Local Union No. 1264, Radio Broadcast Technicians, International Brotherhood of Electrical Workers, AFL, or in any other labor organization of our employees by discriminating against our employees in any manner in regard to their hire or tenure of employment except to the extent permitted by Section 8 (a) (3) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed by Section 7 of the Act

WE WILL offer to John A. Thompson immediate and full reinstatement to his former or substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed and make him whole for any loss of pay suffered as the result of the discrimination against him.

PAPE BROADCASTING COMPANY
(RADIO STATION WALA),
Employer

Dated By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material

APPENDIX B

NOTICE

TO ALL MEMBERS OF LOCAL UNION NO. 1264, RADIO BROADCAST TECHNICIANS, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL, AND TO ALL EMPLOYEES OF PAPE BROADCASTING COMPANY (RADIO STATION WALA)

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT cause or attempt to cause Pape Broadcasting Company (Radio Station Wala), Mobile, Alabama, its officers, agents, successors, or assigns, to discharge because of nonmembership in our organization employees who have requested membership and tendered or paid the initiation fees and periodic dues uniformly required as a condition of acquiring or retaining membership, or cause or attempt to cause said Radio Station Wala to discriminate against its employees in violation of Section 8 (a) (3) of the Act.

WE WILL NOT restrain or coerce employees of said Radio Station Wala, its successors or assigns, in the exercise of the rights guaranteed by Section 7 of the Act except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

WE WILL make whole John A. Thompson for any loss of pay he may have suffered because of the discrimination against him.

LOCAL UNION NO. 1264, RADIO
BROADCAST TECHNICIANS, INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL,
Labor Organization.

Dated By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

R. H. OSBRINK, M. E. OSBRINK AND BERTON W. BEALS AS TRUSTEE, CO-PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF R. H. OSBRINK MANUFACTURING COMPANY *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O. (UAW-CIO), REGION 6

R. H. OSBRINK, M. E. OSBRINK AND BERTON W. BEALS AS TRUSTEE, CO-PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF R. H. OSBRINK MANUFACTURING COMPANY *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O. (UAW-CIO), PETITIONER. Cases Nos. 21-CA-1319 and 21-RC-2262. April 13, 1953

DECISION AND ORDER

On January 15, 1953, Trial Examiner William E. Spencer issued his Intermediate Report and Recommended Order in the above-entitled proceeding, finding that the Respondents had